



Executive Director
MICHAEL J. KELLY

TOWN OF NORTH HEMPSTEAD SOLID WASTE MANAGEMENT AUTHORITY

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PORT WASHINGTON, NEW YORK 11050
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Chair
JUDI BOSWORTH

Board Members
VIVIANA L. RUSSELL
PETER J. ZUCKERMAN
ANGELO P. FERRARA
VERONICA LURVEY
LEE R. SEEMAN
MARIANN DALIMONTE

December 4, 2020

Re: Request for Proposals
Rehabilitation of the Transfer Station Drainage System and Paved Area Infrastructure
999 West Shore Road
Port Washington, NY 11050
SWMA Project No. SWMA-0008-2020

To Whom It May Concern:

The Town of North Hempstead Solid Waste Management Authority (The "Authority") is issuing this Request for Proposals ("RFP") for investigation, engineering, design and construction of the drainage system and site infrastructure for the Transfer Station located at 999 West Shore Road, Port Washington, New York 11050.

If your firm is interested in responding to this Request for Proposal, your response must be addressed to:

Town of North Hempstead
Office of Purchasing, **Attention Georgina Carr**
220 Plandome Road, Lower Level
Manhasset, NY 11030
Attention: **SWMA Project No. SWMA-0008-2020**

Any inquiries concerning this RFP must be in writing or by email only and should be addressed to Georgina Carr at contracts@northhempsteadny.gov. All inquiries must bear in the Subject heading of any email the RFP number assigned to this RFP. The last day to submit any questions related to the RFP will be December 23, 2020 at 3:00 P.M.

To be considered, three (3) bound copies and one electronic copy of your proposal are to be provided. All submissions must be received at the above address no later January 13, 2021 at 11:00 A.M. and shall be based upon the general information and scope of services provided herein.

A Pre-Proposal Meeting to tour the Authority's Transfer Station and associated sites will be conducted on December 15, 2020 at 1:30 P.M. at 999 West Shore Road, Port Washington, NY 11050. Please RSVP by emailing Marshah-Reaff Barrett at barrettm@northhempsteadny.gov.

Scope of Services

The Transfer Station currently has a drainage system for storm water run-off from the facility, along with various concrete and asphalt site infrastructure improvements that are in various conditions. The Authority requires a consulting engineer to evaluate the Transfer Station's storm water system and site improvements to determine their condition, make recommendations on their improvement and provide for design, bidding and construction management services. Specifically, all drains need to be assessed to determine which are functioning. Associated storm water drainage and retention ponds need to be sampled to determine the constituents and studied to determine if any functional improvements are necessary, the paved (asphalt and concrete) area of the Transfer Station also needs to be evaluated, reconstructed/improved and properly contoured so that all storm water will drain to the storm drains. The Authority is looking to have the following tasks completed. However, additional services may be needed after the evaluation of the engineer:

Phase 1 - Assessment

1. Assess the entire drainage system Transfer Station
 - a. Investigate all storm water drainage facilities as well as the contours of the Transfer Station site, as well as the storm water drainage outfalls behind the Transfer Station from which storm water is to drain into retention ponds.
 - i. Verify drainage is functioning as needed and whether additional infrastructure is required
 - ii. Collect samples from both drainage retention ponds
 - iii. Determine if the overall drainage is adequate and what improvements are required
2. Assess the entire paved area of the Transfer Station
 - a. Replace pavement including concrete sidewalks/gutters
 - b. Design new pavement to make sure all storm water flows without obstruction to the storm drains

Phase 2 - Design

3. Drainage system
 - a. Design drainage enhancements as needed with input from The Authority
 - b. If needed, design upgrades for storm water ponds and outfalls
4. Paved area including concrete sidewalks/gutter
 - a. Design asphalts and concrete upgrades for the Transfer Station with input from The Authority
 - b. All paved areas at the Transfer Station must be able to support tractor trailer travel and certain areas must be able to support storage of full tractor trailers.**
5. Permitting – determining whether any new permits or permit modifications are necessary for the improvements, preparing and submitting applications for new permits and modifications and assisting the Authority in providing additional information or documentation for approval of such permits and modifications.

Phase 3 – Bid Coordination

6. Bid Documents and Process
 - a. Assist The Authority with the Bid process
 - i. Assemble all required documents for the Bid process, including but not limited to design plans and specifications
 - ii. As required assist The Authority with responses to the Bid questions from potential vendors
 - iii. Attend all Bid Meetings with The Authority

- b. Assist the Authority in reviewing submitted bids and recommending a successful contractor.

Phase 4 – Construction Management

7. Construction

- i. Preparation of construction cost estimate and construction schedule. Construction schedules and plans must make the assumption that the Transfer Station will remain an open and operational facility, without interruption, during the construction period. As such, proposals must include, amongst other things, assumptions that construction will occur in phases to accommodate facility operations, as well as a high level of coordination and cooperation with the contracted operator of the Transfer Station, Omni Recycling of Westbury.
 - ii. Construction management/administration services including inspection, shop drawing review, contractor payment review and regulatory compliance needs
 - iii. Liaison between The Authority and Contractor
 - iv. Documentation that the construction was performed in accordance with design requirements, observation of the construction activities
 - v. Quality Assurance Services
- b. Certification and O&M Updates
- i. A Construction Certification Report. The report will consist of the following:
 - 1. Detail description of the work completed and verification that it within design requirements
 - 2. Note design changes and give explanation for all changes
 - 3. Description of field tests and tabulations of test data used to substantiate the quality requirements of products and workmanship
 - 4. Record drawings, consisting of electronic markups of the most recent modified
 - ii. Updated Operation and Maintenance Manual
 - 1. Operation and Maintenance Manual must provide a clear guide to operating and servicing the system and include but not limited to
 - a. Manufacturer
 - i. Cut sheet for all materials and equipment used in construction
 - ii. Operating manuals and procedures for all equipment
 - b. Trouble shooting guides for all equipment
 - c. Preventative maintenance schedule
 - d. Spare parts list (if any)
 - e. Warranty list for all parts, including warranty expiration dates
- c. All above documents will be compiled into a project compilation document. The Authority will be provided with three hard copies along with a PDF file on three USB drives.
- d. Progress Reporting
- i. Commissioning of the system
 - 1. One month of continuous operations, a report will be prepared for The Authority documenting the performance of the rehabilitated drainage system and paved area improvements. The report will include (but not limited too):
 - a. Operations issues if any of the equipment
 - b. Verifying the drainage system functions as expected
 - i. The Storm water pond and outfalls function and expected

1. Example proper drainage/dispersion of storm water into the larger water body
- c. Ascertain if any additional actions are needed for the system
- ii. This Progress report will be added to the project compilation document
- e. Budget
 - i. Project Expenditure
 - ii. Project cost update during the construction

Requirements

The Consultant shall demonstrate that it has relevant experience in performing projects of comparable scope. Each proposal shall be prepared concisely and avoid the use of elaborate promotional materials beyond those sufficient to provide a complete and accurate presentation.

Proposals shall include a fee proposal for completion of the work described with details regarding the proposer's technical approach and fee. The fee shall be a "Not-to-Exceed" fee based on hours billed by only technical personnel. All administrative and clerical costs shall be included in your billing rate or multiplier. The proposal must contain a task by task cost summary with estimated hours of effort, and adhere to the Authority's proposed schedule for completion of the project. The proposal must include a project specific organizational chart and resumes of appropriate staff. The successful consultant shall identify similar projects and related experience in projects of similar scope.

Note that the following conditions apply to this RFP:

1. There is no express or implied obligation for the Authority to reimburse responding firms for any expenses incurred in preparing proposals in response to this RFP, and the Authority will not reimburse such expenses.
2. During the evaluation process, the Authority reserves the right, where it may serve the Authority's best interest, to request additional information or clarification from a proposer, or to allow corrections on non-material errors or omissions or waive non-material requirements.
3. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Authority and the firm selected.
4. The Authority reserves the right, as best serves its interest, to change the due date for receipt of proposals.
5. The firm selected to perform the services requested in this letter will be required to execute an agreement with the Authority for the services on the Authority's standard form. The selected firm will be required to, to the fullest extent provided by law, defend and indemnify and hold harmless the Authority from claims, suits, action, damages and costs of every nature, kind, name and description resulting from the negligent performance of the services. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage provided by the firm. Negligent performance of service shall include, in addition to negligence founded upon tort, negligence based upon the firm's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing shall create or give third parties any claim or right of action against the firm or the Authority beyond those provided by law.

6. In addition, the selected firm will be required to procure and maintain the following insurance coverage during the term of any such agreement with the Authority, and furnish certificates of insurance evidencing its procuring the following insurance policies with a carrier holding an "A" rating from AM Best Company, or its equivalent:
 - A. Commercial General Liability insurance from a New York State admitted carrier covering the liability of the Consultant including Contractual insurance defending, indemnifying and holding harmless the Authority, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a general aggregate (bodily injury/property damage) of TWO MILLION (\$2,000,000.00) DOLLARS and each occurrence of ONE MILLION (\$1,000,000.00) DOLLARS. The Authority shall be named additional insured in such policy.
 - B. Professional Errors and omissions insurance in the minimum of ONE MILLION (\$1,000,000.00) DOLLARS. The Authority shall be named additional insured in such policy.
 - C. Worker's Compensation Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to the State Workers' Compensation Law §57(2).
 - D. Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).

At the time of execution of this Agreement, the Consultant shall furnish the Authority with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) days prior written notice is given to the Authority and the Executive Director.

Method of Selection of Awardee

The Authority representatives will evaluate each proposal received with emphasis on the following factors:

Demonstrated relevant experience in performing projects of comparable value and scope to the work contemplated in this RFP	25%
Concept, methodology and approach	25%
Reasonableness of fees and costs	20%
Quality of project teams overall organizational strength	20%
References and reputation	10%

Notwithstanding any other provisions of this RFP the Authority reserves the right to select the proposal that best meets the requirements of the RFP and not necessarily the proposer proposing the lowest cost.

Further the Authority reserves the right, for any or no reason and in its sole and absolute discretion to amend, in whole or in part, this RFP, withdraw or cancel this RFP, or to accept or reject any or all proposals prior to the execution of a contract with no penalty to the Authority.

Notice of Award

The Authority shall inform the consultant that they have been selected by means of a Notice of Award issued pursuant to a resolution adopted by the Authority Board. Neither the selection of a Proposer nor the issuance of Notice of Award shall constitute a binding commitment on behalf of the Authority to enter into any contract with the Awardee, as any binding arrangement must be set forth in definitive documentation negotiated between and signed by the Awardee and the Authority.

Contract

The Authority shall enter into contract negotiations with the Awardee. Contract negotiations will include the scope of services for the project. Fees shall be based upon the hourly rates and other information provided by the Awardee in their proposal. The Contract shall contain provisions substantially similar to those attached to this RFP. Proposers should understand that the final contract executed by the Authority may include other terms and conditions deemed necessary by the Authority.

Thank you for your interest in working with the Authority.

Sincerely,

Michael Kelly
Executive Director/Commissioner

STANDARD AUTHORITY TERMS AND CONDITIONS

1. Consultant as Professional Representative.

The Consultant shall serve as the Authority's professional representative in the execution of the work described in this Agreement and shall give consultation and advice to the Authority during the performance of the required services. The Consultant represents to the Authority that it is adequately staffed, skilled and experienced to perform the services required by this Agreement and further, that it is duly licensed and qualified under the laws of the State of New York to perform these services.

2. Control of Services.

The Consultant's services shall at all times be subject to the direction and control of the Executive Director of the Authority (the "Executive Director"). The Executive Director's decision shall be final and binding upon the Consultant on all matters arising out of, in connection with, or relating to, this Agreement. To prevent all disputes and litigation, the Executive Director shall, in all cases, determine the amount, quality, acceptability and fitness of the work being performed under the provisions of this Agreement and shall determine every question which may arise relative to the Consultant's performance of the Agreement. The decision of the Executive Director shall be final, conclusive and binding upon the Consultant. This paragraph shall not operate as a waiver of the Consultant's right to litigate or to perform work under protest while reserving the right to litigate with respect thereto.

3. Required Services.

The Consultant shall undertake and complete such Services as more particularly set forth herein: _____ (the "Required Services").

The Consultant shall ascertain the applicable practices and requirements of the Authority, the New York State Department of Environmental Conservation, the United States Environmental Protection Agency and any other governmental agency having jurisdiction over the Services or the Authority's landfill prior to beginning any of the Services. All work required under this agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria and any special requirements.

4. Term.

Unless earlier terminated pursuant to Section 9 hereof, the term of this Agreement shall commence on _____, and shall expire upon the completion of the Required Services, unless sooner terminated in accordance with this Agreement. Notwithstanding the above, the Consultant shall not commence the Required Services unless a notice to proceed has been provided by the Executive Director.

5. Sub-Contracting.

In the event the Consultant desires to sub-contract for any of the services required by this Agreement, even though this may be an accepted and usual practice of the profession, the Consultant shall advise the Executive Director, in writing, as to the name and address of the proposed sub-consultant and the exact scope of the work the sub-consultant will perform. The Consultant shall not sub-contract with the sub-consultant until the Executive Director has given written approval of the sub-consultant and the work to be performed. All work by sub-consultants shall be performed at no additional cost to the Authority except as herein elsewhere stated in this Agreement. All sub-consultants shall be required to furnish the Authority with proof of insurance in the same manner and the amounts as required pursuant to Section 24 herein. All sub-consultants shall be required to comply with the applicable terms and conditions of this Agreement.

6. Compliance With Laws.

The Consultant shall comply with all Federal, State and local laws, rules and regulations, which

apply to the work required by this Agreement. Consultant shall also be responsible for and will cause all persons employed upon the work, including its officers, employees, agents and sub-consultants to comply with all applicable laws, rules and regulations. Failure of the Consultant or its officers, employees, agents or sub-consultants to comply with such laws, rules and regulations shall be grounds for the immediate termination of this Agreement by the Authority. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York. Contractor shall also comply with the applicable terms and conditions of a Consent Order concerning the Authority's L-4 Landfill entered by the United States District Court for the Eastern District of New York on September 4, 1991, a copy of which is attached hereto.

7. Certification.

By executing this Agreement, the Consultant and each person signing on behalf of the Consultant certifies, under penalty of law that the Consultant understands and agrees to comply with the terms and conditions of the Authority's storm water management program and agrees to implement any corrective actions identified by the Authority or a representative of the Authority. Consultant understands that the Authority must comply with the terms and conditions of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for storm water discharges from Municipal Separate Storm Sewer Systems ("MS4's") and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. Further, Consultant understands that any non-compliance by the Authority will not diminish, eliminate or lessen Consultant's own liability.

8. Assignment.

This Agreement shall not be assigned in whole or in part without the prior written consent of the Authority.

9. Termination.

Notwithstanding any other provision of this Agreement allowing for termination due to failure of the Consultant to perform pursuant to the terms hereof, the Authority reserves the absolute right to terminate the services of the Consultant at any time. Termination shall be effective upon the service on the Consultant of a written notice of termination by certified mail from the Executive Director. Upon termination, the Authority shall pay for the services rendered by the Consultant to the date of termination in proportion of all services to be rendered and in accordance with the terms of this Agreement. Any and all work performed by the Consultant up to the point of termination shall become the property of the Authority and shall be delivered to the Executive Director.

10. Abandonment or Suspension of Work.

The Authority reserves the absolute right to abandon or suspend the work or services provided herein. The Consultant shall not be entitled to any compensation during the period in which work has been suspended; however, the Consultant shall be paid in accordance with Schedule 'B' for any work performed prior to the suspension. Rather, the Consultant's time for completing the required work shall be extended by the Authority by the amount of time as, in the opinion of the Executive Director, the Consultant has been delayed in such suspension. In the event of the abandonment of work, the Authority will pay the Consultant for the services rendered to the date of abandonment in proportion to all services rendered under this Agreement provided, however, that such compensation shall in no event exceed the amount the Consultant would be entitled to receive had the entirety of the Required Services (or any phase of the Required Services) been completed.

11. Public Information.

Consultant agrees not to cause or allow to be issued any news release to the public press in any way related to the work required by this Agreement. The Consultant further agrees not to make available to any member of the public any information relating to this Agreement without the prior written consent of the Executive Director. Consultant further agrees that it will not make speeches, engage in public appearances, publish articles or otherwise publicize the work under this Agreement

without the prior written consent of the Executive Director.

12. Confidentiality.

All information whether printed, written, or oral, furnished by the Authority to the Consultant shall be held in confidence and used only in connection with the performance of the services required by this Agreement.

13. Refusal to Testify.

If any person when called to testify before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a municipal department, or other municipal agency which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the State of New York, or any political subdivision thereof, a public authority, or with any public department, agency or office of the state, or of any political subdivision thereof, or of a public authority, refuses to answer any relevant question concerning such transaction or contract even though offered immunity against the use of his (its) answer and evidence derived therefrom in any subsequent criminal case in which he (it) is a defendant, then any such person or any firm, partnership, or corporation of which he (it) is a member, partner, director, or official shall be disqualified for a period of five years after such refusal from submitting bids to, receiving awards from, or entering into any contracts with the Authority of North Hempstead or any department or agency or official thereof. If such a person refuses to answer any relevant question as aforesaid, then this Agreement may be cancelled and terminated by the Authority without the Authority incurring any penalty or damages by virtue of such cancellation or termination. Any monies owed for goods delivered or work done prior to cancellation shall be paid.

14. Non-Discrimination.

The Consultant and any sub-consultant will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Consultant, the words EQUAL OPPORTUNITY EMPLOYER shall appear in type twice as large as that used in the body of the advertisement.

15. Release.

The acceptance by the Consultant or any person claiming under the Consultant of any payment made on the final payment claim under this Agreement shall operate on and shall be a release to the Authority from all claims and liability to the Consultant, its successors, legal representatives and assigns, for any compensation or reimbursement for services rendered or work performed under or by the provisions of this Agreement.

16. Standard Practices.

16.1 Any and all reports prepared under this Agreement shall be of 8½" x 11" format with the 11" dimension being the vertical size. Cover and binding shall be as agreed upon by the Authority. Oversize exhibits (if required) shall be foldouts or shall be contained within a "Pocket" bound into the report.

16.2 Reports shall be in a format required by the United States Environmental Protection Agency and the New York State Department of Environmental Conservation.

16.3 The Authority will:

16.3.1 Provide the Consultant, when requested, with complete information concerning the requirements of the Project.

16.3.2 Provide legal access for the Consultant to enter upon public and private lands as required for the Consultant to perform such work and inspection of the Project.

16.3.3 Give thorough consideration to all the Consultant's requests and proposals and shall inform the Consultant of all decisions within a reasonable time.

16.4. The foregoing practices may be supplemented or modified, in writing, by the Executive Director.

16.5. Notwithstanding any of these provisions, the Consultant shall, in all cases, conform to any special requirements of other government agencies where such conformity is a required condition for funding, grant approval, or submission/approval of applications and the like.

16.6. Copies of all correspondence received and sent by the Consultant relative to this work shall be provided to the Executive Director.

17. Claims or Actions.

In the event that any claim is made or any action brought on any aspect other than the design concept of a construction contract in any way relating to the plans and specifications drawn by the Consultant, the Consultant will diligently render to the Authority any and all assistance, which the Authority may require of the Consultant. None of the above shall be deemed in any way a waiver of the Consultant's responsibility for the information provided by his (its) plans, specifications and work.

18. Non-Liability of Appropriating Agency.

The Consultant's compensation shall be paid by the Authority out of such monies appropriated by the Authority for the purposes herein provided. Members of any board, any other officer or agent duly authorized to act for and on behalf of the Authority shall not, by virtue of such authority or action, be personally liable in any manner whatsoever to the Consultant.

19. Copyright or Patent Infringement.

The Consultant shall defend all actions or claims alleging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by the Consultant. Consultant shall hold harmless the Authority from all loss or damage resulting from any action or claim alleging infringement or any copyright or patent providing further that the Authority, within fifteen (15) days after receipt of any notice of infringement, shall have forwarded the same to the Consultant, in writing, by certified mail. All work done by the Consultant for the Authority shall be deemed a "Work for Hire" and all patents, copyrights, and intellectual property rights shall belong to the Authority and the Consultant shall, from time to time, execute any documents that are reasonably requested by the Authority to vest all such rights in the Authority to the drawings, plans, specifications, concepts, models and other work or materials created by Consultant in furtherance of the Project.

20. Laboratory Work.

Any and all testing work required under this Agreement shall be subject to the approval of the Executive Director prior to undertaking any such testing program.

The Executive Director will determine if it is in the best interests of the Authority to use the facilities of private testing laboratories or those of public agencies such as the Nassau County Department of Public Works, or a combination of both.

The Consultant shall review the testing results and shall state, in writing, that they are acceptable or unacceptable.

If private testing laboratories are used, the Consultant shall process the claims for payment and shall submit his (its) certification that the amount of the claim is reasonable and proper.

21. Change Orders.

In any instance involving the Consultant's change orders to contractors, the Consultant is required to obtain written authorization from the Executive Director as to the details and cost of the proposed change order prior to authorizing the contractors to proceed with the work provided for under the change order. In those instances, when the Consultant must issue a change order on an emergency basis, the Consultant shall contact the Executive Director as soon as reasonably practical to obtain the Executive Director's authorization to proceed with the work required by the change order and the Consultant shall certify to the Executive Director the reason and basis for such emergency, that the Consultant, by error or omission, had not caused such emergency and that reasonable efforts were made to obtain authorization for such change from the Executive Director. The authorization shall be confirmed in writing.

22. Consultant Liability.

A. To the fullest extent permitted by law, the Consultant:

Shall be solely responsible for and shall indemnify and hold harmless the Authority, and its officers, employees, agents, and servants (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorney's fees and disbursements), and damages (collectively "Losses"), including Losses attributable to acts or omissions of the Consultant or any employee, servant, agent, or sub-consultant of the Consultant (the "Consultant's Agent"), arising out of or in connection with this Agreement, including Losses incurred in connection with any investigation, litigation or other proceeding, or preparing a defense to or prosecuting the same; except, however, that the Consultant shall not be held liable when an occurrence results solely from the negligence of the Authority.

Shall, upon the Authority's demand and at the Authority's direction, promptly and diligently defend, at the Consultant's sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more of the Indemnified Parties and which arise out of the negligent performance of the Consultant, or its sub-consultants, in connection with this Agreement, and the Consultant shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

Shall, and shall cause Consultant's Agents to, cooperate with the Authority in connection with the investigation, defense, or prosecution of any action, suit, or proceeding arising out of on in connection with this Agreement.

B. The obligations of the Consultant pursuant to this Section shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.

C. Nothing in this Section or elsewhere in this Agreement shall create or give to third parties any claim or right of action against the Authority beyond that which legally exist regardless of the provisions of this Agreement.

- D. The Consultant's indemnification obligation hereunder shall survive the expiration or termination of this Agreement.
- E. Negligent performance of service within the meaning of this provision shall include, in addition to negligence founded upon tort, negligence based upon the Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of work. Nothing in the provision or in this agreement shall create or give the third parties any claim or right of action against the Consultant or the Authority beyond such as may legally exist irrespective of the provision of this agreement.

23. Insurance.

Consultant agrees to procure and maintain, with a New York State admitted carrier holding an "A" rating from AM Best Company or equivalent, the following insurance policies during the term of this Agreement and furnish certificates of insurance evidencing its procuring of said policies:

- A. Commercial General Liability insurance from a New York State admitted carrier covering the liability of the Consultant including Contractual insurance defending, indemnifying and holding harmless the Authority, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a general aggregate (bodily injury/property damage) of TWO MILLION (\$2,000,000.00) DOLLARS and each occurrence of ONE MILLION (\$1,000,000.00) DOLLARS. The Authority shall be named additional insured in such policy.
- B. Professional Errors and omissions insurance in the minimum of ONE MILLION (\$1,000,000.00) DOLLARS. The Authority shall be named additional insured in such policy.
- C. Worker's Compensation Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to the State Workers' Compensation Law §57(2).
- D. Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).

At the time of execution of this Agreement, the Consultant shall furnish the Authority with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) days prior written notice is given to the Authority and the Executive Director.

24. Payments to Consultant.

In consideration of the services to be performed under this Agreement, the Authority agrees to pay the Consultant an amount not to exceed _____ (the "Contract Amount").

The Consultant agrees that the Contract Amount shall constitute full and complete payment for the Required Services rendered. In the event that the Consultant incurs costs in excess of the Contract Amount, the Consultant will not be paid or reimbursed for such costs by the Authority and shall not have no claim against the Authority for such costs and/or expenses. Payments to the Consultant shall be subject to the submission of invoices and claim forms (on the Authority's standard form) to the Authority and audit and approval by the Authority's Assistant Treasurer. The Executive Director or the Assistant Treasurer may request, and the Consultant shall provide, such documentation as the Executive Director or the Assistant Treasurer deem necessary in order to review any claim.

25. Extra Work.
If the Consultant is of the opinion that any work that the Consultant has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall promptly notify the Executive Director of that fact, in writing. The Executive Director shall be the sole judge as to whether or not such work is beyond the scope of this Agreement and constitutes extra work. In the event the Executive Director determines that the work constitutes extra work, the Authority shall provide extra compensation to the Consultant upon a fair and equitable basis except the Consultant shall not commence the extra work until authorized to do so in writing by the Authority. The Executive Director may direct the performance of any work during the pendency of his deliberations and the Consultant shall perform such work pending a determination by the Executive Director.
26. Ownership of Documents.
All completed original tracings and the original master specification sheets shall constitute the property of the Authority but may, during the course of the performance of the work required by this Agreement, remain in custody of the Consultant unless otherwise directed by the Executive Director. In the event of any revisions in specifications or original drawings, the Consultant shall submit two (2) revised copies to the Executive Director.
27. Surrender of Documents.
Upon termination or completion of this Agreement, the Consultant shall surrender, within fifteen (15) days to the Executive Director, all data, reports, maps, surveys, material specifications, contacts, budgets, salary schedules, time records, plans, tracings, sketches, charts, photographs and exhibits prepared, developed or kept in connection with or as a part of this project. This section does not apply to any records or documents pertaining to the operation of the Consultant's business. The Consultant may retain in its possession copies of those records or documents, which it considers necessary for proof of performance.
28. Patentable Rights.
Any patentable result arising out of this Agreement as well as information, designs, specifications, know how, data and findings arising out of the work of this project shall constitute the exclusive property of the Authority.
29. Taxes, Royalties and Expenses.
The Consultant shall pay all taxes, royalties and expenses incurred in connection with the services under this Agreement, except as otherwise provided in the payment provisions.
30. Covenant Against Contingent Fees.
The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Authority shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or brokerage.
31. Independent Contractor.
The Consultant, in accordance with his status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including but not limited to, Workmen's Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit. The Consultant shall not engage, on a full time or part-time or other basis during the period of this

Agreement, any professional or technical personnel who are or have been at any time during the period of the Agreement in the employ of the Federal Highway Administration or the Public Works organization of any State, County or City or Authority except regularly retired employees, without the consent of the public employer of such person.

32. Errors or Omissions in Plans

The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the Consultant under this contract. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Neither the Authority's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Consultant shall be and remain liable to the Authority in accordance with applicable law for all damages to the Authority caused by the Consultant's negligent performance or breach of contract of any of the services furnished under this contract. The rights and remedies of the Authority provided for under this contract are in addition to any other rights and remedies provided by law.

33. Inspection of the Consultant's Work and Records.

The Consultant shall provide all labor, technical and engineering services, all materials such as prints, paper and the like necessary to complete the work, except as otherwise provided herein. The Consultant shall furnish the Authority with copies of any studies, design information, cost analysis or other information upon request, which data shall become the property of the Authority, and hold the Consultant's work and records open at all times to the inspection of the Authority.

The duly authorized representatives of the Authority and on Federally aided projects, representatives of the New York State Department of Transportation and the Federal Highway Administration, shall have the right at all times to inspect the work of the Consultant.

The Consultant shall retain all books, documents, papers, accounting records and other evidence pertaining to cost incurred for a minimum period of six (6) years after final settlement and shall make them available for inspection and audit by the Authority.

34. Amendments and Modifications.

This Agreement may only be amended or modified by a written document duly executed by the Authority and the Consultant in the same manner as this Agreement. All duly executed amendments and modifications shall not be invalid or unenforceable because of lack of consideration.

35. Merger.

All understandings and agreements previously had between the parties are merged into this Agreement, which fully and completely contains the entire terms of the Agreement. Both the Consultant and the Authority have entered into this Agreement after full investigation and neither party has relied upon any statement or representation not embodied with this Agreement.

36. Severability.

If, for any reason, any terms or provisions of this Agreement shall become or be declared void, illegal and of no effect or superseded by any modification or amendment, all the remaining terms and provisions of this Agreement shall continue in full force and effect.

37. Waiver.

The failure of the Authority to require performance by the Consultant of any provision hereof shall in no way affect the right of the Authority to enforce such provision. Waiver by the Authority of any breach of any provision hereof shall not be construed a waiver of any succeeding breach of such provision of any other provision of this Agreement.